IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11037 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

THAKORE KIRANJI PRADHANJI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11037 of 2001

MR MM TIRMIZI for Petitioner No. 1

MR DP JOSHI, AGP, for Respondents No. 1-3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 09/01/2002

ORAL JUDGEMENT

1. District Magistrate, Mehsana, passed an order on July 16, 2001, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner under the provisions of the said Act.

2. The detaining authority took into consideration three offences registered against the detenu under Bombay Prohibition Act. The authority also considered the statements of three anonymous witnesses. According to the authority, the activity of the detenu is that of a bootlegger and is detrimental to public order. The authority was satisfied that the witnesses suffered from genuine fear from the detenu in respect of their person and property and, therefore, powers under Section 9(2) of the PASA Act are required to be exercised by not disclosing identity of the witnesses. The detaining authority considered the possibility of resorting to less drastic remedies under ordinary laws and came to conclusion that in order to immediately prevent the detenu from pursuing his illegal and anti-social activities, detention under PASA Act is required to be resorted to.

3. The only ground canvassed by learned Advocate Mr. Tirmizi for the petitioner is that the representation has not been considered by the detaining authority in its proper perspective. He submitted that a representation was made on behalf of the detenu on September 27, 2001 along with an affidavit of the father of the detenu stating that the incident narrated by the witnesses are inquired into by him and are found to have not taken place. proper perspective. The detaining authority while considering the representation has not inquired into the correctness of the affidavit vis-a-vis the statements of the anonymous witnesses regarding the incident. The representation, therefore, cannot be said to have been genuinely considered by the detaining authority and, therefore, the right of the detenu is adversely affected. The petition may, therefore, be allowed.

4. Mr. D.P. Joshi, learned Assistant Government Pleader, has opposed this petition.

5. Having regard to rival side contentions, the fact that emerges, without any dispute, is that a representation was made on September 27, 2001 on behalf of the detenu along with an affidavit sworn by the father of the detenu contending, inter alia, that he has inquired about the incident narrated by the anonymous witnesses and that no such incident has occurred. There is no dispute either that the authority has inquired into the correctness and genuineness of this averment in the affidavit vis-a-vis the statement of anonymous witnesses. There is nothing to indicate any exercise was undertaken

to ascertain by cross-checking the contents of the affidavit. This was required to be done as the affidavit formed part of the representation which contradicted the statement of the anonymous witnesses. The authority concerned was expected to perform its duty with all seriousness and sincerity at it command. Consideration of a representation made by a detenu is not an empty formality provided by the Constitution. The right of the detenu of making an effective representation is, therefore, infringed. A mechanical approach in considering the representation would result into rendering the provision of Article 22(5) of the Constitution as non-existent and would result into denial of the right of the detenu guaranteed under the Constitution. The continued detention of the detenu, therefore, would be rendered bad in law. The petition, therefore, deserves to be allowed on this ground alone.

6. In view the above discussion, this petition is allowed. The impugned order of detention dated July 16, 2001 passed against the detenu is hereby quashed. The detenu-Thakore Kiranji Pradhanji is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

gt